

**STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY**

In the Matter of Remedial Action by:

City of Yakima, Washington
County of Yakima, Washington

AGREED ORDER

No. DE 6522

TO: **R.A. Zais, Jr.**
City Manager

Mr. Dave Zabell
Assistant City Manager
City of Yakima
129 North Second Street
Yakima, WA 98901

Mr. Vern Redifer
Public Services Director
Yakima County
128 North Second Street
Yakima, WA 98902

TABLE OF CONTENTS

I.	INTRODUCTION.....	1
II.	JURISDICTION.....	1
III.	PARTIES BOUND.....	1
IV.	DEFINITIONS.....	1
V.	FINDINGS OF FACT.....	2
VI.	ECOLOGY DETERMINATIONS.....	3
VII.	WORK TO BE PERFORMED.....	4
VIII.	TERMS AND CONDITIONS OF ORDER.....	5
	A. Public Notice.....	5
	B. Remedial Action Costs.....	6
	C. Implementation of Remedial Action.....	6
	D. Designated Project Coordinators.....	7
	E. Performance.....	8
	F. Access.....	8
	G. Sampling, Data Submittal, and Availability.....	9
	H. Public Participation.....	9
	I. Retention of Records.....	10
	J. Resolution of Disputes.....	11
	K. Extension of Schedule.....	11
	L. Amendment of Order.....	12

M.	Endangerment	13
N.	Reservation of Rights.....	14
O.	Transfer of Interest in Property.....	14
P.	Compliance with Applicable Laws.....	14
Q.	Periodic Review.....	16
R.	Indemnification.....	16
IX.	SATISFACTION OF ORDER.....	16
X.	ENFORCEMENT	16

LIST OF EXHIBITS

EXHIBIT A	Site Diagram
EXHIBIT B	Data Submittal Requirements

LIST OF FIGURES

FIGURE 1	UST SITE 4244 TANKS #1 and #1A
FIGURE 2	UST SITE 4244 TANKS #2, #3, and #4
FIGURE 3	UST SITE 4337 TANKS #1 through #10
FIGURE 4	UST SITE 6113 TANK #5
FIGURE 5	UST SITE 6113 TANK #9
FIGURE 6	UST SITE 6113 TANKS #14 and #15
FIGURE 7	UST SITE 11546 TANKS #10, #11, and #12

I. INTRODUCTION

The mutual objective of the State of Washington, Department of Ecology (Ecology) and the City of Yakima and County of Yakima under this Agreed Order (Order) is to provide for remedial action at a facility where there has been a release or threatened release of hazardous substances. This Order requires the City of Yakima and County of Yakima to prepare a remediation plan for contaminated soil and groundwater conditions at the Yakima, Washington, Airport. Ecology believes the actions required by this Order are in the public interest.

II. JURISDICTION

This Agreed Order is issued pursuant to the Model Toxics Control Act (MTCA), RCW 70.105D.050(1).

III. PARTIES BOUND

This Agreed Order shall apply to and be binding upon the Parties to this Order, their successors and assigns. The undersigned representative of each party hereby certifies that he or she is fully authorized to enter into this Order and to execute and legally bind such party to comply with this Order. The City of Yakima and County of Yakima agree to undertake all actions required by the terms and conditions of this Order. No change in ownership or corporate status shall alter the City of Yakima and County of Yakima's responsibility under this Order. The City of Yakima and County of Yakima shall provide a copy of this Order to all agents, contractors, and subcontractors retained to perform work required by this Order, and shall ensure that all work undertaken by such agents, contractors, and subcontractors complies with this Order.

IV. DEFINITIONS

Unless otherwise specified herein, the definitions set forth in Chapter 70.105D RCW and Chapter 173-340 WAC shall control the meanings of the terms in this Order.

- A. Site: The Site is referred to as the Yakima Airport and is generally located at 2008, 2300, 2400 West Washington Avenue and 2000 South 16th Avenue in Yakima, Washington. The Site is defined by the extent of contamination caused by the release of hazardous substances at the Site. Based upon factors currently known to Ecology, the Site is more particularly described in the Site Diagram (Exhibit A). The Site constitutes a Facility under RCW 70.105D.020(4).
- B. Parties: Refers to the State of Washington, Department of Ecology, the City of Yakima and the County of Yakima.
- C. Potentially Liable Person (PLP): Refers to the City of Yakima and the County of Yakima.

- D. Agreed Order or Order: Refers to this Order and each of the exhibits to this Order. All exhibits are integral and enforceable parts of this Order. The terms "Agreed Order" or "Order" shall include all exhibits to this Order.

V. FINDINGS OF FACT

Ecology makes the following findings of fact, without any express or implied admissions of such facts by the City of Yakima and County of Yakima:

- A. The City of Yakima and the County of Yakima jointly own the Yakima Airport.
- B. The four Airport underground storage tanks (USTs) site numbers are 4244, 4337, 6113, and 11546 in the Ecology UST site database. All are located on the Yakima Airport property. Each UST site number had multiple tanks associated with it.
- C. The Yakima Airport 'Facility' is defined by the four UST ID numbers 4244, 4337, 6113, and 11546. These ID numbers identify 28 tanks that were excavated and removed in 1995, 1996, and 1998. When the tanks were excavated and removed, contaminated soil and groundwater conditions were left in some tank excavations. Exhibit A shows the general locations of the tanks and the Facility.
- D. UST Site Number 4244 had five tanks (#1, #1A, #2, #3, #4) in two locations. All five tanks were excavated and removed in 1995. Tanks #1 and #1A, shown in Figure 1 were at one location. A gasoline concentration (9,100 mg/kg) in soil at tank #1 exceeds the MTCA Method A cleanup level. Diesel concentrations (to 46,000 mg/kg) in soil at tank #1A exceeds the MTCA Method A cleanup level. No groundwater samples were taken at this location.

The three tanks at the UST Site number 4244, shown in Figure 2, were #2, #3, and #4. Diesel concentrations in soil (5,600 mg/kg) and groundwater (1,100 ug/L) were found at this location. Both soil and groundwater concentrations exceed the MTCA Method A soil and groundwater cleanup levels.

- E. UST Site Number 4337, shown in Figure 3, had ten (10) tanks (#1 through #10) in three UST Basins located at the McAllister Flying Service area. All 10 tanks were excavated and removed in 1998. Groundwater in UST Basin location #1 was found to be contaminated. That location contained tank #10. Groundwater contamination in tank basin #1 had diesel and benzene concentrations in groundwater exceeding MTCA Method A cleanup levels at 830 ug/L and 10 ug/L respectively.
- F. UST Site Number 6113, shown in Figure 4, had ten tanks (#5, #6, #7, #9, #9A, #9B, #14, #15, #16, #17) in five UST Basins. These tanks were excavated and removed in 1995

and 1996. At the site of tank #5 gasoline was found in groundwater at a concentration of 2,400 ug/L in groundwater exceeding MTCA Method A cleanup level.

A second UST at location 6113, shown in Figure 5, tank #9 had gasoline and ethylbenzene concentrations in soil, 410 mg/kg and 7 mg/kg respectively, that exceeded MTCA Method A cleanup levels.

A third and fourth UST at location 6113, shown in Figure 6, tanks #14 and #15 had a benzene concentration of 0.45 mg/kg in soil exceeding MTCA Method A cleanup level. No groundwater samples were taken at this location.

- G. UST Site Number 11546, shown in Figure 7, had three tanks (#10, #11, #12) in one UST Basin location. This area was previously leased by Mr. Wayne G. Turner. Mr. Turner sold the buildings and tanks to the Yakima Air Terminal in late 1991. The three tanks in this area were excavated and removed in 1995. Diesel concentrations (to 140,000 ug/L) in groundwater at tanks #10, #11, and #12 was found that exceeded MTCA Method A cleanup levels.

VI. ECOLOGY DETERMINATIONS

- A. The City of Yakima and County of Yakima is an "owner or operator" as defined in RCW 70.105D.020(12) of a "facility" as defined in RCW 70.105D.020(4).
- B. Based upon all factors known to Ecology, a "release" or "threatened release" of "hazardous substance(s)" as defined in RCW 70.105D.020(20) and RCW 70.105D.020(7), respectively, has occurred at the Yakima Airport Site.
- C. Based upon credible evidence, Ecology issued a PLP status letter to the City of Yakima and County of Yakima dated January 18, 2007, pursuant to RCW 70.105D.040, -.020(16) and WAC 173-340-500. After providing for notice and opportunity for comment, reviewing any comments submitted, and concluding that credible evidence supported a finding of potential liability, Ecology issued a determination that the City of Yakima and County of Yakima are PLPs under RCW 70.105D.040 and notified the City of Yakima and County of Yakima of this determination by letter dated February 20, 2007.
- D. Pursuant to RCW 70.105D.030(1) and -.050(1), Ecology may require the City of Yakima and County of Yakima to investigate or conduct other remedial actions with respect to any release or threatened release of hazardous substances, whenever it believes such action to be in the public interest. Based on the foregoing facts, Ecology believes the remedial actions required by this Order are in the public interest.

VII. WORK TO BE PERFORMED

Based on the Findings of Fact and Ecology Determinations, it is hereby ordered that the City of Yakima and County of Yakima take the following remedial actions at the Site and that these actions be conducted in accordance with Chapter 173-340 WAC unless otherwise specifically provided for herein:

- A. Plan and conduct a Remedial Investigation/Feasibility Study (RI/FS), consistent with WAC 173-340-350. The RI/FS shall collect data and information regarding the nature and extent of contamination at the Site so as to enable the selection of a cleanup action.
 1. The City of Yakima and the County of Yakima shall provide to Ecology a draft RI/FS Work Plan. The draft Work Plan shall include, at a minimum:
 - a. A history of the site, providing an operational history of UST usage, installation, and excavation dates, and summarizing what is known to date about the nature and extent of the contamination from confirmed releases.
 - b. Implementation of soil sampling and the installation of groundwater monitoring wells to determine groundwater gradient, confirm both upgradient and downgradient groundwater conditions, and fully determine the nature and extent of soil and groundwater contamination at the site. The RI may integrate previous investigations and sampling and analysis results.
 - c. A discussion of the site geology and hydrogeology as it relates to the current and future distribution of contaminants. Include information on public and private well locations within one half mile of the Site.
 2. Prior to any work at the Site, the City of Yakima and the County of Yakima shall prepare a Sampling and Analysis Plan (SAP) in accordance with WAC 173-340-820 and Ecology's Guidelines for Preparing Quality Assurance Project Plans for Environmental Studies (February, 2001) for Ecology review and approval. The SAP shall contain site maps with the proposed number and locations of soil sampling points and groundwater monitoring wells as well as the other requirements of WAC 173-340-820. All samples must be analyzed for known contaminants present and per MTCA protocol. No sampling may be conducted prior to Ecology approval of the SAP. All samples must be analyzed using a laboratory accredited by Ecology.
 3. Prior to the commencement of any work at the Site, a Site Health and Safety Plan shall be submitted to Ecology. The Health and Safety Plan will address potential exposure pathways for those conducting the investigation in accordance with WAC 173-340-810.

4. Upon completion of the work performed as outlined in the Work Plan, the City of Yakima and the County of Yakima shall prepare and submit to Ecology three copies of the RI/FS.
 5. After the completion of soil and groundwater sampling, the City of Yakima and County of Yakima shall conduct a feasibility study (FS) to determine and develop cleanup action alternatives for the site. A FS will be generated in accordance with the requirements of WAC 173-340-350(8). At a minimum, the FS must identify cleanup action alternatives that protect human health and the environment, including terrestrial ecological receptors, cleanup levels or remediation levels, and points of compliance. In accordance with WAC 173-340-140(7) and WAC 173-340-350(8)(a) Ecology shall select the cleanup action.
- B. Schedule for completion of the work shall begin on the day of the effective date of this Order.
- Draft RI Work Plan: within 90 days of the effective date of this Order
 - Final RI Work Plan: within 45 days from Ecology review and approval of the draft RI Work Plan
 - Perform RI field work: begin field work within 30 days from Ecology approval of Final RI Work Plan, and complete field work within 90 days from Ecology approval of Final RI Work Plan. When approved by Ecology, this RI Work Plan becomes an integral and enforceable part of this Order
 - Draft RI/FS Report submittal: within 60 days of receipt of the final analytical data
 - Final RI/FS Report submittal: within 30 days from Ecology comments on the draft
- C. Quarterly Progress Reports shall be submitted once fieldwork begins. Progress Reports shall continue until the submittal of the draft Remedial Investigation/Feasibility Study.
- D. If Ecology determines that insufficient progress is being made in the preparation of any of the deliverables required by this Section, Ecology may complete and issue the final deliverable and seek to recover costs from the City of Yakima and the County of Yakima.

VIII. TERMS AND CONDITIONS OF ORDER

A. Public Notice

RCW 70.105D.030(2)(a) requires that, at a minimum, this Order be subject to concurrent public notice. Ecology shall be responsible for providing such public notice and reserves the right to modify or withdraw any provisions of this Order should public comment disclose facts or considerations which indicate to Ecology that this Order is inadequate or improper in any respect.

B. Remedial Action Costs

The City of Yakima and County of Yakima shall pay to Ecology costs incurred by Ecology pursuant to this Order and consistent with WAC 173-340-550(2). These costs shall include work performed by Ecology or its contractors for, or on, the Site under Chapter 70.105D RCW, including remedial actions and Order preparation, negotiation, oversight, and administration. These costs shall include work performed both prior to and subsequent to the issuance of this Order. Ecology's costs shall include costs of direct activities and support costs of direct activities as defined in WAC 173-340-550(2). The City of Yakima and County of Yakima shall pay the required amount within ninety (90) days of receiving from Ecology an itemized statement of costs that includes a summary of costs incurred, an identification of involved staff, and the amount of time spent by involved staff members on the project. A general statement of work performed will be provided upon request. Itemized statements shall be prepared quarterly. Pursuant to WAC 173-340-550(4), failure to pay Ecology's costs within ninety (90) days of receipt of the itemized statement of costs will result in interest charges at the rate of twelve percent (12%) per annum, compounded monthly.

Pursuant to RCW 70.105D.055, Ecology has authority to recover unreimbursed remedial action costs by filing a lien against real property subject to the remedial actions.

C. Implementation of Remedial Action

If Ecology determines that the City of Yakima and County of Yakima has failed without good cause to implement the remedial action, in whole or in part, Ecology may, after notice to the City of Yakima and County of Yakima, perform any or all portions of the remedial action that remain incomplete. If Ecology performs all or portions of the remedial action because of the City of Yakima and County of Yakima's failure to comply with its obligations under this Order, the City of Yakima and County of Yakima shall reimburse Ecology for the costs of doing such work in accordance with Section VIII. B (Remedial Action Costs), provided that the City of Yakima and County of Yakima is not obligated under this Section to reimburse Ecology for costs incurred for work inconsistent with or beyond the scope of this Order.

Except where necessary to abate an emergency situation, the City of Yakima and County of Yakima shall not perform any remedial actions at the Site outside those remedial actions required by this Order, unless Ecology concurs, in writing, with such additional remedial actions.

D. Designated Project Coordinators

The project coordinator for Ecology is:

Mr. Richard Bassett
15 W. Yakima Avenue, Suite 200
Yakima, WA 98902-3452
509/454-7839
(fax) 509/575-2809
e-mail; rbas461@ecy.wa.gov

The project coordinators for the City of Yakima and County of Yakima are:

Mr. Douglas Mayo
City Engineer
City of Yakima
129 North Second Street
Yakima, WA 98902
(509) 576-6678
Email: dmayo@ci.yakima.wa.us

Mr. Vern Redifer
Public Services Director
Yakima County
128 North Second Street
Yakima WA 98902
(509) 574-2300
Email: vern.redifer@co.yakima.wa.us

Each project coordinator shall be responsible for overseeing the implementation of this Order. Ecology's project coordinator will be Ecology's designated representative for the Site. To the maximum extent possible, communications between Ecology and the City of Yakima and County of Yakima, and all documents, including reports, approvals, and other correspondence concerning the activities performed pursuant to the terms and conditions of this Order shall be directed through the project coordinators. The project coordinators may designate, in writing, working level staff contacts for all or portions of the implementation of the work to be performed required by this Decree.

Any party may change its respective project coordinator. Written notification shall be given to the other party at least ten (10) calendar days prior to the change.

E. Performance

All geologic and hydrogeologic work performed pursuant to this Order shall be under the supervision and direction of a geologist licensed in the State of Washington or under the direct supervision of an engineer registered in the State of Washington, except as otherwise provided for by Chapters 18.220 and 18.43 RCW.

All engineering work performed pursuant to this Order shall be under the direct supervision of a professional engineer registered in the State of Washington, except as otherwise provided for by RCW 18.43.130.

All construction work performed pursuant to this Order shall be under the direct supervision of a professional engineer or a qualified technician under the direct supervision of a professional engineer. The professional engineer must be registered in the State of Washington, except as otherwise provided for by RCW 18.43.130.

Any documents submitted containing geologic, hydrologic or engineering work shall be under the seal of an appropriately licensed professional as required by Chapter 18.220 RCW or RCW 18.43.130.

The City of Yakima and County of Yakima shall notify Ecology in writing of the identity of any engineer(s) and geologist(s), contractor(s) and subcontractor(s), and others to be used in carrying out the terms of this Order, in advance of their involvement at the Site.

F. Access

Ecology or any Ecology authorized representative shall have the full authority to enter and freely move about all property at the Site that the City of Yakima and County of Yakima either owns, controls, or has access rights to at all reasonable times for the purposes of, *inter alia*: inspecting records, operation logs, and contracts related to the work being performed pursuant to this Order; reviewing the City of Yakima and County of Yakima's progress in carrying out the terms of this Order; conducting such tests or collecting such samples as Ecology may deem necessary; using a camera, sound recording, or other documentary type equipment to record work done pursuant to this Order; and verifying the data submitted to Ecology by the City of Yakima and County of Yakima. The City of Yakima and County of Yakima shall make all reasonable efforts to secure access rights for those properties within the Site not owned or controlled by the City of Yakima and County of Yakima where remedial activities or investigations will be performed pursuant to this Order. Ecology or any Ecology authorized representative shall give reasonable notice before entering any Site property owned or controlled by the City of Yakima and County of Yakima unless an emergency prevents such notice. All Parties who access this Site pursuant to this Section shall be subject to compliance with all rules, regulations and standards of the Transportation Safety Administration (TSA),

Federal Aviation Administration (FAA), Homeland Security, the Yakima Air Terminal, the City and County of Yakima, including all applicable police, fire and public safety regulations. Ecology employees and their representatives shall not be required to sign any liability release or waiver as a condition of Site property access.

G. Sampling, Data Submittal, and Availability

With respect to the implementation of this Order, the City of Yakima and County of Yakima shall make the results of all sampling, laboratory reports, and/or test results generated by it or on its behalf available to Ecology. Pursuant to WAC 173-340-840(5), all sampling data shall be submitted to Ecology in both printed and electronic formats in accordance with Section VII (Work to be Performed), Ecology's Toxics Cleanup Data Submittal Requirements (see Program Policy 840 in Exhibit B or visit http://www.ecy.wa.gov/programs/tcp/data_submittal/Data_Requirements.htm), and/or any subsequent procedures specified by Ecology for data submittal.

If requested by Ecology, the City of Yakima and County of Yakima shall allow Ecology and/or its authorized representative to take split or duplicate samples of any samples collected by the City of Yakima and County of Yakima pursuant to implementation of this Order. The City of Yakima and County of Yakima shall notify Ecology seven (7) days in advance of any sample collection or work activity at the Site. Ecology shall, upon request, allow the City of Yakima and County of Yakima and/or its authorized representative to take split or duplicate samples of any samples collected by Ecology pursuant to the implementation of this Order, provided that doing so does not interfere with Ecology's sampling. Without limitation on Ecology's rights under Section VIII. F (Access), Ecology shall notify the City of Yakima and County of Yakima prior to any sample collection activity unless an emergency prevents such notice.

In accordance with WAC 173-340-830(2)(a), all hazardous substance analyses shall be conducted by a laboratory accredited under Chapter 173-50 WAC for the specific analyses to be conducted, unless otherwise approved by Ecology.

Any structures installed for purposes of monitoring or the collection of other data must meet all Air Terminal safety standards and in any event, those exceeding three (3) inches in height require mounting on a frangible base.

H. Public Participation

A Public Participation Plan is required for this Site. The City of Yakima and County of Yakima will develop an acceptable Public Participation Plan for Ecology's review and approval.

Ecology shall maintain the responsibility for public participation at the Site. However, the City of Yakima and County of Yakima shall cooperate with Ecology, and shall:

1. If agreed to by Ecology, develop appropriate mailing list, prepare drafts of public notices and fact sheets at important stages of the remedial action, such as the submission of work plans, remedial investigation/feasibility study reports, cleanup action plans, and engineering design reports. As appropriate, Ecology will edit, finalize, and distribute such fact sheets and prepare and distribute public notices of Ecology's presentations and meetings.
2. Notify Ecology's project coordinator prior to the preparation of all press releases and fact sheets, and before major meetings with the interested public and local governments. Likewise, Ecology shall notify the City of Yakima and County of Yakima prior to the issuance of all press releases and fact sheets, and before major meetings with the interested public and local governments. For all press releases, fact sheets, meetings, and other outreach efforts by the City of Yakima and County of Yakima that do not receive prior Ecology approval, the City of Yakima and County of Yakima shall clearly indicate to its audience that the press release, fact sheet, meeting, or other outreach effort was not sponsored or endorsed by Ecology.
3. When requested by Ecology, participate in public presentations on the progress of the remedial action at the Site. Participation may be through attendance at public meetings to assist in answering questions or as a presenter.
4. When requested by Ecology, arrange and/or continue information repositories to be located at the following locations:
 - a. Yakima Valley Regional Library
102 North 3rd Street
Yakima, WA 98901
 - b. Ecology's Central Regional Office
15 W. Yakima Avenue, Suite 200
Yakima, WA 98902

At a minimum, copies of all public notices, fact sheets, and press releases; all quality assured monitoring data; remedial action plans and reports, supplemental remedial planning documents, and all other similar documents relating to performance of the remedial action required by this Order shall be promptly placed in these repositories.

I. Retention of Records

During the pendency of this Order, and for ten (10) years from the date of completion of work performed pursuant to this Order, the City of Yakima and County of Yakima shall preserve all records, reports, documents, and underlying data in its possession relevant to the implementation of this Order and shall insert a similar record retention requirement into all contracts with project contractors and subcontractors. Upon request of Ecology,

the City of Yakima and County of Yakima shall make all records available to Ecology and allow access for review within a reasonable time.

J. Resolution of Disputes

1. In the event a dispute arises as to an approval, disapproval, proposed change, or other decision or action by Ecology's project coordinator, or an itemized billing statement under Section VIII. B (Remedial Action Costs), the Parties shall utilize the dispute resolution procedure set forth below.
 - a. Upon receipt of Ecology's project coordinator's written decision or the itemized billing statement, the City of Yakima and County of Yakima has fourteen (14) days within which to notify Ecology's project coordinator in writing of its objection to the decision or itemized statement.
 - b. The Parties' project coordinators shall then confer in an effort to resolve the dispute. If the project coordinators cannot resolve the dispute within fourteen (14) days, Ecology's project coordinator shall issue a written decision.
 - c. The City of Yakima and County of Yakima may then request regional management review of the decision. This request shall be submitted in writing to the Central Region Toxics Cleanup Section Manager within seven (7) days of receipt of Ecology's project coordinator's written decision.
 - d. The Section Manager shall conduct a review of the dispute and shall endeavor to issue a written decision regarding the dispute within thirty (30) days of the City of Yakima and County of Yakima's request for review. The Section Manager's decision shall be Ecology's final decision on the disputed matter.
2. The Parties agree to only utilize the dispute resolution process in good faith and agree to expedite, to the extent possible, the dispute resolution process whenever it is used.
3. Implementation of these dispute resolution procedures shall not provide a basis for delay of any activities required in this Order, unless Ecology agrees in writing to a schedule extension.

K. Extension of Schedule

1. An extension of schedule shall be granted only when a request for an extension is submitted in a timely fashion, generally at least thirty (30) days prior to expiration of the deadline for which the extension is requested, and good cause exists for granting the extension. All extensions shall be requested in writing. The request shall specify:
 - a. The deadline that is sought to be extended;
 - b. The length of the extension sought;

- c. The reason(s) for the extension; and
 - d. Any related deadline or schedule that would be affected if the extension were granted.
2. The burden shall be on the City of Yakima and County of Yakima to demonstrate to the satisfaction of Ecology that the request for such extension has been submitted in a timely fashion and that good cause exists for granting the extension. Good cause may include, but may not be limited to:
- a. Circumstances beyond the reasonable control and despite the due diligence of the City of Yakima and County of Yakima including delays caused by unrelated third parties or Ecology, such as (but not limited to) delays by Ecology in reviewing, approving, or modifying documents submitted by the City of Yakima and County of Yakima;
 - b. Acts of God, including fire, flood, blizzard, extreme temperatures, storm, or other unavoidable casualty; or
 - c. Endangerment as described in Section VIII. M (Endangerment).

However, neither increased costs of performance of the terms of this Order nor changed economic circumstances shall be considered circumstances beyond the reasonable control of the City and County of Yakima.

3. Ecology shall act upon any written request for extension in a timely fashion. Ecology shall give the City of Yakima and County of Yakima written notification of any extensions granted pursuant to this Order. A requested extension shall not be effective until approved by Ecology. Unless the extension is a substantial change, it shall not be necessary to amend this Order pursuant to Section VIII. L (Amendment of Order) when a schedule extension is granted.
4. An extension shall only be granted for such period of time as Ecology determines is reasonable under the circumstances. Ecology may grant schedule extensions exceeding ninety (90) days only as a result of:
- a. Delays in the issuance of a necessary permit which was applied for in a timely manner;
 - b. Other circumstances deemed exceptional or extraordinary by Ecology; or
 - c. Endangerment as described in Section VIII. M (Endangerment).

L. Amendment of Order

The project coordinators may verbally agree to minor changes to the work to be performed without formally amending this Order. Minor changes will be documented in writing by Ecology within seven (7) days of verbal agreement.

Except as provided in Section VIII. N (Reservation of Rights), substantial changes to the work to be performed shall require formal amendment of this Order. This Order may only be formally amended by the written consent of both Ecology and the City of Yakima and County of Yakima. The City of Yakima and County of Yakima shall submit a written request for amendment to Ecology for approval. Ecology shall indicate its approval or disapproval in writing and in a timely manner after the written request for amendment is received. If the amendment to this Order represents a substantial change, Ecology will provide public notice and opportunity to comment. Reasons for the disapproval of a proposed amendment to this Order shall be stated in writing. If Ecology does not agree to a proposed amendment, the disagreement may be addressed through the dispute resolution procedures described in Section VIII. J (Resolution of Disputes).

M. Endangerment

In the event Ecology determines that any activity being performed at the Site is creating or has the potential to create a danger to human health or the environment on or surrounding the Site, Ecology may direct the City of Yakima and County of Yakima to cease such activities for such period of time as it deems necessary to abate the danger. The City of Yakima and County of Yakima shall immediately comply with such direction.

In the event the City of Yakima and County of Yakima determines that any activity being performed at the Site is creating or has the potential to create a danger to human health or the environment, the City of Yakima and County of Yakima may cease such activities. The City of Yakima and County of Yakima shall notify Ecology's project coordinator as soon as possible, but no later than twenty-four (24) hours after making such determination or ceasing such activities. Upon Ecology's direction the City of Yakima and County of Yakima shall provide Ecology with documentation of the basis for the determination or cessation of such activities. If Ecology disagrees with the City of Yakima and County of Yakima's cessation of activities, it may direct the City of Yakima and County of Yakima to resume such activities.

If Ecology concurs with or orders a work stoppage pursuant to Section VIII M (Endangerment), the City of Yakima and County of Yakima's obligations with respect to the ceased activities shall be suspended until Ecology determines the danger is abated, and the time for performance of such activities, as well as the time for any other work dependent upon such activities, shall be extended in accordance with Section VIII. K (Extension of Schedule) for such period of time as Ecology determines is reasonable under the circumstances.

Nothing in this Order shall limit the authority of Ecology, its employees, agents, or contractors to take or require appropriate action in the event of an emergency.

N. Reservation of Rights

This Order is not a settlement under Chapter 70.105D RCW. Ecology's signature on this Order in no way constitutes a covenant not to sue or a compromise of any of Ecology's rights or authority. Ecology will not, however, bring an action against the City of Yakima and County of Yakima to recover remedial action costs paid to and received by Ecology under this Order. In addition, Ecology will not take additional enforcement actions against the City of Yakima and County of Yakima regarding remedial actions required by this Order, provided the City of Yakima and County of Yakima complies with this Order.

Ecology nevertheless reserves its rights under Chapter 70.105D RCW, including the right to require additional or different remedial actions at the Site should it deem such actions necessary to protect human health and the environment, and to issue orders requiring such remedial actions. Ecology also reserves all rights regarding the injury to, destruction of, or loss of natural resources resulting from the release or threatened release of hazardous substances at the Site.

O. Transfer of Interest in Property

No voluntary conveyance or relinquishment of title, easement, leasehold, or other interest in any portion of the Site shall be consummated by the City of Yakima and County of Yakima without provision for continued implementation of all requirements of this Order and implementation of any remedial actions found to be necessary as a result of this Order.

Prior to the City of Yakima and County of Yakima's transfer of any interest in all or any portion of the Site, and during the effective period of this Order, the City of Yakima and County of Yakima shall provide a copy of this Order to any prospective purchaser, lessee, transferee, assignee, or other successor in said interest; and, at least thirty (30) days prior to any transfer, the City of Yakima and County of Yakima shall notify Ecology of said transfer. Upon transfer of any interest, the City of Yakima and County of Yakima shall restrict uses and activities to those consistent with this Order and notify all transferees of the restrictions on the use of the property.

P. Compliance with Applicable Laws

1. All actions carried out by the City of Yakima and County of Yakima pursuant to this Order shall be done in accordance with all applicable federal, state, and local requirements, including requirements to obtain necessary permits, except as provided in RCW 70.105D.090. At this time, no federal or state requirements have been identified as being applicable to the actions required by this Order. Local

requirements will be identified and implemented by the City of Yakima and the County of Yakima.

2. Pursuant to RCW 70.105D.090(1), the City of Yakima and County of Yakima is exempt from the procedural requirements of Chapters 70.94, 70.95, 70.105, 77.55, 90.48, and 90.58 RCW and of any laws requiring or authorizing local government permits or approvals. However, the City of Yakima and County of Yakima shall comply with the substantive requirements of such permits or approvals. At this time, no state or local permits or approvals have been identified as being applicable but procedurally exempt under this Section.

The City of Yakima and County of Yakima has a continuing obligation to determine whether additional permits or approvals addressed in RCW 70.105D.090(1) would otherwise be required for the remedial action under this Order. In the event either Ecology or the City of Yakima and County of Yakima determines that additional permits or approvals addressed in RCW 70.105D.090(1) would otherwise be required for the remedial action under this Order, it shall promptly notify the other party of its determination. Ecology shall determine whether Ecology or the City of Yakima and County of Yakima shall be responsible to contact the appropriate state and/or local agencies. If Ecology so requires, the City of Yakima and County of Yakima shall promptly consult with the appropriate state and/or local agencies and provide Ecology with written documentation from those agencies of the substantive requirements those agencies believe are applicable to the remedial action. Ecology shall make the final determination on the additional substantive requirements that must be met by the City of Yakima and County of Yakima and on how the City of Yakima and County of Yakima must meet those requirements. Ecology shall inform the City of Yakima and County of Yakima in writing of these requirements. Once established by Ecology, the additional requirements shall be enforceable requirements of this Order. The City of Yakima and County of Yakima shall not begin or continue the remedial action potentially subject to the additional requirements until Ecology makes its final determination.

3. Pursuant to RCW 70.105D.090(2), in the event Ecology determines that the exemption from complying with the procedural requirements of the laws referenced in RCW 70.105D.090(1) would result in the loss of approval from a federal agency that is necessary for the State to administer any federal law, the exemption shall not apply and the City of Yakima and County of Yakima shall comply with both the procedural and substantive requirements of the laws referenced in RCW 70.105D.090(1), including any requirements to obtain permits.

Q. Periodic Review

As remedial action, including groundwater monitoring, continues at the Site, the Parties agree to review the progress of remedial action at the Site, and to review the data accumulated as a result of monitoring the Site as often as is necessary and appropriate under the circumstances. At least every five (5) years after the initiation of cleanup action at the Site the Parties shall meet to discuss the status of the Site and the need, if any, for further remedial action at the Site. Ecology reserves the right to require further remedial action at the Site under appropriate circumstances. This provision shall remain in effect for the duration of this Order.

R. Indemnification

The City of Yakima and County of Yakima agree, to the extent allowed by law, to indemnify and save and hold the State of Washington, its employees, and agents harmless from any and all claims or causes of action for death or injuries to persons or for loss or damage to property to the extent arising from or on account of acts or omissions of the City of Yakima and County of Yakima, its officers, employees, agents, or contractors in entering into and implementing this Order. However, the City of Yakima and County of Yakima shall not indemnify the State of Washington nor save nor hold its employees and agents harmless from any claims or causes of action to the extent arising out of the negligent acts or omissions of the State of Washington, or the employees or agents of the State, in entering into or implementing this Order.

IX. SATISFACTION OF ORDER

The provisions of this Order shall be deemed satisfied upon the City of Yakima and County of Yakima's receipt of written notification from Ecology that the City of Yakima and County of Yakima has completed the remedial activity required by this Order, as amended by any modifications, and that the City of Yakima and County of Yakima has complied with all other provisions of this Agreed Order.

X. ENFORCEMENT

Pursuant to RCW 70.105D.050, this Order may be enforced as follows:

- A. The Attorney General may bring an action to enforce this Order in a state or federal court.
- B. The Attorney General may seek, by filing an action, if necessary, to recover amounts spent by Ecology for investigative and remedial actions and orders related to the Site.
- C. In the event the City of Yakima and County of Yakima refuses, without sufficient cause, to comply with any term of this Order, the City of Yakima and County of Yakima will be liable for:

1. Up to three (3) times the amount of any costs incurred by the State of Washington as a result of its refusal to comply; and
 2. Civil penalties of up to twenty-five thousand dollars (\$25,000) per day for each day it refuses to comply.
- D. This Order is not appealable to the Washington Pollution Control Hearings Board. This Order may be reviewed only as provided under RCW 70.105D.060.

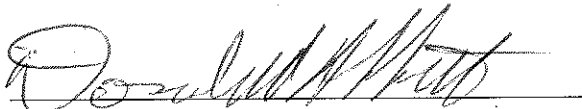
Effective date of this Order: April 15, 2009

CITY OF YAKIMA



R.A. Zais, Jr.
City Manager
129 North Second Street
Yakima WA 98901
(509) 575-6040

**STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY**



Don Abbott
Regional Manager
Toxics Cleanup Program
15 W. Yakima Avenue
Yakima, WA 98901
(509) 575-2490

YAKIMA COUNTY



J. Rand Elliott
Chairman, Board of County Commissioners
128 North Second Street
Yakima WA 98901
(509) 574-1500

4/7/09

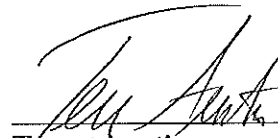


APPROVED AS TO FORM



Lawrence Watters
Senior Assistant City Attorney
200 South Third Street
Yakima WA 98901

Date



Terry Austin
Corporate Counsel, Yakima County
128 North Second Street
Yakima WA 98901

Date

4/3/09

